prior decisions. For the reasons described in Staff's comments, SWBT's and AT&T's cost studies do not comply with the Commission's directives for the re-submission of non-recurring cost studies. Under the Commission's rules of practice and procedure, the burden on going forward squarely fell upon AT&T and SWBT. K.A.R. 82-1-235(f). AT&T and SWBT have failed to provide the Commission an adequate basis to accept their prices proposed as alternative prices to the Commission's prior determinations.

29. The Commission originally accepted SWBT's cost study models over competing cost study methodologies, conditioned on the conversion of SWBT's main frame-based cost study models to a PC-based format. Complete PC-based cost studies make review and analysis much more available, efficient and straightforward for all parties. To date, SWBT has not complied with the Commission's order to submit cost studies in a PC-based format. SWBT responds by stating it has not converted any of its rerun nonrecurring cost studies to a PC format because the conversion would have required SWBT to perform new and different studies, not merely rerun previously filed studies. Not having the cost studies in PC-based format limited the ability of other parties, including Staff, to prepare independent cost study analysis and recommend prices for non-recurring charges in accordance the pricing parameters determined by the Commission. Furthermore, as noted above, SWBT's cost studies filed electronically do not match the paper copy filed with the Commission. Many of the studies utilize calculations not contained within the electronic files provided. If SWBT would have converted its cost study models into a PC format, these problems would have been avoided and would have allowed the parties to more accurately gauge the correctness of the information for themselves. The requirement that SWBT accomplish such a conversion still stands.

30. The Commission is faced with the necessity to choose the best course for setting final prices for the non-recurring unbundled network elements at this phase of the proceeding. The practical choices appear to be to continue the proceeding until all unbundled network elements needed by CLECs are available with prices supported by accurate and Commission-approved cost data or to assess the information the Commission received in this matter and its limitations, apply its best judgment, and determine the prices for the non-recurring unbundled network elements now. The Commission does not believe it is in the public interest to consume more time and resources in this docket to permit yet another round of cost study filings. Further delay may preclude Kansas from realizing the benefits of competition under the State Telecommunications Act and the Federal Telecommunications Act of 1996. Moreover, in Docket No. 97-SWBT-411-GIT, the Commission agreed to support SWBT's application before the FCC for InterLATA authority under Section 271 of the Federal Telecommunications Act premised, in part, on the expectation that final permanent prices for UNEs, including the non-recurring charge component, would be in place and available to CLECs. Accordingly, the only viable option is to determine the prices from the range established by the original cost studies, tempered for practical considerations, including consideration of rulings by the Texas and Missouri Public Service Commissions, which also regulate Southwestern Bell Telephone Companies, and by the comments filed by the parties on reconsideration. The Commission recognizes that many telecommunication services are provided on a regional basis. As such, it can be appropriate to rely upon the examination by other state commissions facing similar facts and circumstances. *See, e.g.,* OSS discussion in SWBT's Application and Staff Report filed in 97-SWBT-411-GIT

31. The Commission notes that some UNEs were not addressed by one or both parties in their cost studies or comments. In these instances, the Commission has relied upon cost study information for related UNEs. It is clear that some UNEs provide the same or similar function in SWBT's network. In those instances where the function is identical or nearly identical, the Commission will apply the rate for the similar UNE.[5] Furthermore, in those instances where the function is similar, it logically follows that a cost relationship should exist between the two elements and a ratio can be used to derive an appropriate price.[6] Similarly, the cost of a cross connect for DS 1Trunk port to collocation may be used to support pricing for a functionally identical dedicated transport cross connect to collocation, also at the DS1 level.[7]

Labor Costs:

32. The most significant cost component for setting UNE prices is labor cost. From review of Staff's evidence and comments, SWBT cannot provide any objective verification for its labor cost assumptions except for the hourly rate charged for a technician's work. For those functions requiring labor, it appears that SWBT has overstated costs associated with labor. As a result, SWBT's cost studies established the high end of the range for possible prices. It also appears that AT&T's cost studies placed more emphasis on automated or mechanized processing than SWBT which had the effect of minimizing labor costs. In the February 19, 1999 Order, the Commission weighted AT&T's and SWBT's cost studies so that the final price fell toward the low end of the range of possible prices. Under these facts and circumstances, the Commission believes it

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[5]/See Reference Number 11 on Revised Attachment B.

[6]/See Reference Number 4 on the Revised Attachment B.

[7]/See Reference Number 6 on the Revised Attachment B.

appropriate to affirm the February 19, 1999 Order in this regard and weight AT&T's and SWBT's cost studies for those network elements omitted from the February 19, 1999 Order in the same manner.[8] In making this decision to weight AT&T's and SWBT's cost studies to fall toward the low end of the range of possible prices, the Commission recognizes that some degree of manual procedures and processes must be recognized in order to accurately price SWBT's network elements. The choice between manual processing and automated or mechanized processing should not be used to reward the inefficient service provider. The prices to be set by the Commission should reflect prudent costs, and should not be reflective of costs of an inefficient service provider. The Commission notes that the prices for the maintenance of service, 'and time and material elements have been corrected for mathematical errors made in the compilation of the original Attachment B.[9]

33. The Commission notes that AT&T's and SWBT's cost studies for switch features reflected an agreement on UNEs that were essentially automated processes. In these instances, the Commission accepts the prices reflected in the cost studies.[10]

34. With respect to labor costs claimed for customers changing carriers, Staff correctly points out that SWBT is not required to put facilities in place when a customer changes carriers. There is nominal, if any, labor cost incurred by SWBT to do so. Admittedly, some work is performed when billing is changed to a different service provider; however, this appears to be an

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8/See Reference Numbers 1 and 2 on the Revised Attachment B.

9/See Reference Number 8 on the Revised Attachment B.

10/See Reference Number 7 on Revised Attachment B.

insignificant amount of time that has not been accurately estimated. Revised Attachment B will not include a charge for this function.[11]

Five Percent Fall Out Factor:

35. Providing network elements typically involves multiple stages, with numerous work activities in each. During each stage, the potential exists for automated processes to fail, requiring manual intervention. When this occurs, an order is said to "fall out." The Commission previously determined that a five percent fall out factor was appropriate. The five percent fall out factor provided additional support for the Commission to set prices toward the low end of the range of possible prices. The Commission directed SWBT to re-run its non-recurring cost studies, using modifications stated in the Reconsideration Order. The re-run cost studies were to be used to fine tune the final price determinations. The Commission specifically directed SWBT to use a fall out rate of 5 percent because the fall out of business orders from automated processing procedures in a business environment will result in additional manual handling (employee time), ill will and customer complaints, and ultimately the loss of business. These results would not be tolerated in a competitive environment, thus the fall out rates should be determined with a long-run view toward process improvement, efficient and prudent operation. As a regulatory policy matter, it is important to adopt forward-looking least cost standards to avoid institutionalizing disincentives that have an anti-competitive effect and lead to poorer service for consumers. Assumed high fall out rates reward imprudence and inefficiency; high fallout rates have the consequence of added cost for competitors

1 l/The K2A interconnection agreement filed in Docket No. 97-SWBT-41 1-GIT calls for the same resolution.

as well as delays and poor service for customers.[12] This is not the expected result of competitive telecommunications markets, so high fallout rates will not be assumed in the non-recurring cost studies. Also, the Commission found that non-recurring costs should not be based on inefficient manual processing systems, which is not consistent with TELRIC principles requiring forward-looking, least cost methods. Furthermore, assumption of manual processing to any significant degree provides the ILEC with a large economic incentive to delay implementation of electronic flow through of orders through the service establishment process, with attendant negative consequences for the development of competition. The Commission previously stated that "electronic processing is a reasonable assumption for calculation of non-recurring costs, which is consistent and arguably required under the TELRIC costing principles which this Commission and the FCC have adopted." Reconsideration Order at ¶¶ 69-70. The Commission has neither a factual basis nor legal reason to change its prior determination on the five percent fall out factor.

36. The Commission recognizes that for some network elements, AT&T did not provide any cost analysis. Rather, AT&T merely multiplied SWBT's proposed costs times the 5 percent cost fall out factor to determine a recommended price. Prices based solely upon the application of the 5 percent factor are not acceptable.[13]

37. In its January 10, 2000 Reply Comments, SWBT states its OSS recurring cost studies did not include additional investment as indicated by AT&T and Birch Telecom. However, this issue is irrelevant. In paragraph 24 of the Order Regarding Issues Subject to Comment issued April

12/The Commission notes that in Docket No. 97-SWBT-411-GIT the record contains may examples of competitors' complaints regarding delay and excessive order handling, so this is clearly not an academic concern.

13/See Reference Number 3 on the Revised Attachment B.

27, 2000, the Commission noted that "as part of the SBC/Ameritech Merger, SWBT does not plan to recover its OSS monthly costs at this time and will refile a cost study at the appropriate time. As such, SWBT withdraws its cost study for OSS monthly recurring charges." SWBT stated it will eliminate these charges for a minimum of three years. SWBT Comments dated November 1, 1999. Under the SBC/Ameritech Merger Order issued by the FCC, SWBT waives OSS charges until October 2002. 14 F.C.C.R. 14712 (1999). Because SWBT will not charge for such costs for a minimum of three years due to the merger moratorium, whether these types of costs were present in SWBT's OSS recurring cost studies is irrelevant at this time.

38. Staff's comments illustrate that the provisioning[1] of network elements typically involves multiple stages, with numerous work activities in each. Staff stated both AT&T and SWBT applied the fall out factor of 5 percent to individual activities, rather than looking at the net fall out rate for an entire process within a study. According to Staff, the impact of SWBT's fall out assumption is that 59.3 percent of loop installation orders fail to flow through the entire process at the Circuit Provisioning Center and "fall out" to more expensive manual processing. Staff believes "the Commission intended to assume a cumulative fall out rate of 5 percent for all of the related activities within a particular study, thereby assuming that 95 percent of the time the process can be completed without manual intervention." Staff Comments at 13.

39. SWBT interpreted the Reconsideration Order to apply the 5 percent fall out factor only to service orders, and not to any of the other processes associated with the providing of unbundled network elements. SWBT believed the Reconsideration Order made no other changes to fall out assumptions in other non-recurring cost studies. This is an erroneous interpretation. Staff's position accurately reflects the intent of the Commission to focus on the cumulative impact

on customer service quality from the fall out factor. SWBT's interpretation is not reasonable, when the Reconsideration Order is viewed as a whole. The Reconsideration Order relies on a long-run view toward process improvement and efficient operation, noting the high fall out rates cause added cost for competitors, and delays and poor service for consumers. The one example Staff cites as an outcome of SWBT's interpretation–the 59.3 percent failure rate for circuit provisioning–is contrary to the Reconsideration Order.

40. SWBT's point is not saved by reliance on a "probability of occurrence" factor, which SWBT acknowledges "equates to fall out." SWBT Reply Comments, Attachment A at 1. The Commission intended a 5 percent fall out factor be used for the cumulative process associated with a particular UNE non-recurring cost. This intent is not to be obviated by employing additional factors, subdividing the cost study into smaller pieces, or other stratagem. As the cost studies filed here demonstrate, a 5 percent fall out assumption applied only to the service order process can be more than offset by larger fall out assumptions in subsequent steps in the process within the same cost study.

41. As further support for its fall out assumptions, SWBT refers the Commission to paragraphs 161-177 of the FCC's Memorandum Opinion and Order, CC Docket No. 99-295, released December 22, 1999. SWBT Reply Comments at 2. This section of the FCC Order pertains to the provision of access to OSS ordering functions from the incumbent local exchange carrier, Bell Atlantic-New York, to competitive local exchange carriers. A careful reading of the cited paragraphs does not disclose an FCC finding that "extremely low fallout percentages are unrealistic," as suggested by SWBT. In fact, the FCC's findings in this section of the FCC Order support the direction the Commission has taken. The FCC stated it has "used flow-through rates as an indicator

of a BOC's [Bell Operating Company's] ability to process competing carriers' orders. . . . Flow-through rates . . . are a tool used to indicate a wide range of possible deficiencies in a BOC's OSS that may deny an efficient competitor a meaningful opportunity to compete in the local market." FCC's Memorandum Opinion and Order, CC Docket No. 99-295, released December 22, 1999 at paragraph 162. The FCC found the incumbent local exchange carrier, Bell Atlantic–New York, has improved its on-time performance despite the fact that monthly volumes of UNE orders have increased from over 8,600 orders in January to almost 70,000 orders in September." *Id.* at paragraph 164. "Virtually all of the orders not received over EDI are received over the GUI" (i.e., in mechanized fashion). *Id.* at footnote 508. "Electronic notifications are superior to faxed notifications because they are quicker and do not require competing carriers to manually reenter information from the notice into their OSS." *Id.* at footnote 510. KPMG Peat Marwick's testing of incumbent local exchange carrier's systems "supports [the FCC's] conclusion that Bell Atlantic's [the incumbent local exchange carrier] systems are capable of achieving high rates of order flow through". *Id.* at paragraph 168. "Bell Atlantic's recent commitment to implement improvements to its OSS demonstrates that Bell Atlantic will continue to scale its systems to accommodate the expected increase in competing carrier UNE-platform order volumes. Specifically, Bell Atlantic proposes a series of enhancements to further reduce the manual processing of UNE-platform orders." *Id.* at paragraph 169 and footnote 529.

42. Birch Telecom noted that as more customers are provided service, Birch encounters more operational problems with SWBT. Birch Telecom has launched its own "integrated, sophisticated back office" to do what it can to ensure its customers will not face the problems inherent in manual processes. Birch Telecom has done this for the customer's benefit. Birch Telecom questions whether SWBT has had sufficient incentives to introduce changes to the OSS that

will minimize the risk of errors, delay, and extra costs inherent to manual processing. In addition, AT&T cited an analyst's report indicating that substantial sums of money have been spent by AT&T on OSS systems for AT&T to have complete and efficient flow through from receiving a service order, providing the service and billing for the service. The new automated flow through system will also be able to provision changes more readily in capacity for the customer. Both Birch Telcom and AT&T have invested substantial sums of money to eliminate the high cost of manual processing and become more efficient service providers. UNE prices should reflect the current state of technology for such processes.

Surcharge for Orders submitted by fax, telephone or mail:

43. Staff suggests a modest surcharge could be utilized to compensate SWBT when a competing local exchange carrier submits a service order by fax, phone or mail. Birch Telecom states SWBT's suggestion that competing local exchange carriers continue to submit orders by mail, requiring manual processes, is incredible. As demonstrated by the comments of AT&T and Birch Telecom, it is not forward-looking to assume continued, long term existence and use of manual service order processes. SWBT offers electronic interfaces for competing local exchange carriers to use in submitting orders. In an economy increasingly powered by electronic transactions, it is inappropriate to assume continued, extensive use of non-electronic interfaces. Indeed, an FCC order regarding the application of Bell Atlantic-New York, an incumbent local exchange carrier, for interLATA authority specifically notes that virtually all orders received by Bell Atlantic-New York are received electronically. Memorandum Opinion and Order, CC Docket No. 99-295, released December 22, 1999 at footnote 508. The Commission's expectation is that the State of Kansas will keep pace with other states. However, to recognize that manual processes will be used in rare

instances, the Commission finds that a surcharge is the appropriate direction to take, rather than approving a separate cost study and separate charge applicable to orders received by fax, phone or mail. Accordingly, SWBT may employ a surcharge for orders received via fax, phone or mail. As suggested by Staff, this surcharge shall be calculated to recover the cost of having a SWBT clerical employee input the order into its OSS. From that point forward, the service order should be assumed to flow through the ordering and provisioning process like any other order. The SWBT employee's time for the order entry is the only additional cost imposed by the CLEC's service order, and thus it shall be the only cost to be recovered in the surcharge. Furthermore, the nature of the task is such that the time taken for this activity will be brief. Thus, the Commission agrees with Staff that the surcharge will be "modest," and allows a surcharge of $10 based upon SWBT's cost study information for clerical staff inputting service order information. The surcharge is incorporated in the pricing for service order–manual, as set forth in Revised Attachment B.[14]

Transitional Benefit Obligation Costs ("TBO"):

44. The Commission earlier required SWBT to remove TBO costs from its labor rate calculations. Staff noted that TBO costs were only removed from Kansas-specific support asset expenses, but that these adjustments were not made when calculating support asset expenses located in Arkansas, Missouri, Oklahoma and Texas for non-recurring activities in Kansas. Staff believes the Commission intended to remove TBO costs from support asset expenses associated with each of the above states, not just Kansas. The Commission finds that Staff is correct. It would be inconsistent to remove TBO only from the calculation of support expenses for assets located in Kansas, but not for the other states. Each of the support asset expenses is being calculated because the asset is used to support non-recurring activities in Kansas. The inclusion or exclusion of TBO

[14]/See Reference Number 10 on Revised Attachment B.

costs was meant to address all support asset calculations. The appropriate recognition of TBO costs provides additional support for the Commission to set prices toward the low end of the range of possible prices.

TIRKS Expenses:

45. Staff states that SWBT only removed TIRKS-related expenses from its non-recurring cost study for the 8db loop. Staff believes that if an element is provisioned by SWBT in a retail environment without the use of TIRKS, then such expenses should be excluded from the non-recurring cost studies. Staff does not state whether there are additional cost studies from which TIRKS costs should have been removed, but its statement of the Commission's policy is accurate and should be adhered to in conducting the non-recurring cost studies. AT&T states it would have removed TIRKS costs in its version of the cost studies, except for oversight. The appropriate exclusion of TIRKS costs provides additional support for the Commission to set prices toward the low end of the range of possible prices.

Dedicated Inside Plant ("DIP"):

46. The Commission has required the use of a 100 percent DIP factor for purposes of calculating non-recurring costs. This DIP factor assumes that the line and port are already connected for purposes of costing, and thus no further work is necessary to connect the line and port to fulfill a competing local exchange carrier's order for service. This assumption is consistent with SWBT's practice of leaving facilities connected when one resident vacates a premise, so that service may be promptly provided when a new resident moves in. Staff notes that SWBT did not use this assumption in its cost studies. According to Staff, SWBT filed a port cost study which did not recognize DIP efficiencies. Even a cursory review of SWBT's filing bears this out. For example,

the line port charge according to the Reconsideration Order is $39.37, but when compared to the rerun cost study, SWBT proposes a line port charge of $80.45. AT&T has recited the record support for the Commission's earlier decision to utilize 100 percent DIP, which includes the fact that 100 percent DIP is the forward-looking economic practice. As labor costs rise and equipment costs decline, it is typically more efficient to leave connections in place for future reuse, thereby avoiding labor costs involved in dismantling and subsequently reconnecting the facility to the same customer premise. The failure to recognize the appropriate DIP factor provides additional support for the Commission to set prices toward the low end of the range of possible prices.

47. SWBT stated it followed Staff's earlier recommendation that DIP should not be assumed, and did not consider DIP in its rerun non-recurring cost studies. It is neither appropriate or reasonable for SWBT to rely on Staff's position, or any other party, when that position pre-dates a Commission order that addressed that specific issue. SWBT should have complied with the Commission's orders in this case, not selectively use as an assumption a party's position that had been addressed by a subsequent order. SWBT did not similarly rely on Staff positions in other areas that were against its preferences, so it is clearly inconsistent that it would do so here.

48. SWBT also contends that 100 percent DIP factor is contrary to the Federal Telecommunications Act of 1996, which allows competing local exchange carriers to purchase individual elements. However, the Federal Act does not detail the level of unbundling that is required, and does not specifically direct the unbundled, separate provision of a line port. Nor do the FCC's rules on unbundling specifically require the separate provision of a line port element. The Commission cannot visualize a circumstance where a CLEC would desire to order a line port from the ILEC, without also ordering a loop. When ports are properly priced, as we have done in this

matter, we also consider it to be very unlikely that a competing local exchange carrier would order a loop without a port. If ports were priced artificially high, it might lead the competing local exchange carrier to seek alternatives to obtaining the port from the incumbent local exchange carrier. But the Commission has priced ports on a cost basis. If SWBT is faced with the circumstance of a CLEC that wishes to order ports without loops, it can address that using procedures available to it under the Federal Telecommunications Act of 1996, and the procedures of this Commission. The 100 percent DIP assumption earlier required by this Commission is to be utilized in the cost studies. Also, as observed by both SWBT and Staff, this means that there is no non-recurring charge associated with providing a line side port to a competing local exchange carrier, although specified monthly recurring rates will continue to apply.

Dedicated Outside Plant ("DOP"):

48. The Commission's Order on Reconsideration required an assumption for cost study purposes that outside plant was left in place, or "dedicated" 80 percent of the time. There were varying views expressed by some of the parties on this requirement, including a request for "reconsideration" by SWBT. SWBT Reply Comments at ¶ 19. The primary support for SWBT's position appears to be a view that SWBT will incur costs every time an unbundled loop and an unbundled port are provisioned, even where facilities already exist. According to SWBT, "SWBT must reconfigure the network as an unbundled network where pieces of it are reconnected." *Id.* at paragraph 17. The Commission has dealt with this issue on more than occasion: first in the Inputs Order, and second in the February 19, 1999 Order at ¶ 93. In the February 19, 1999 Order, the Commission relied upon the decision of the United States Supreme Court on the FCC's unbundled network element rules. FCC Rule Section 51.315(b), which was upheld by the United States

Supreme Court, supports if not compels, the Commission's prior determination on DOP. SWBT's comments assume that the unbundled network elements are first disconnected, then reconnected. The FCC rule prevents the separation of currently combined network elements, except upon request of the competing local exchange carrier. SWBT's posited disconnection is not to occur under the FCC's rules. The appropriate recognition of the DOP factor provides additional support for the Commission to set prices toward the low end of the range of possible prices.

49. Narrower issues have also been raised by Staff and AT&T, and responded to by SWBT. Staff notes that SWBT did not employ the 80 percent DOP factor in its costing of Basic Rate Interface ("BRI") or Primary Rate Interface ("PRI") ISDN loops, or 4-wire loops. Staff believes that a much lower DOP factor is appropriate in this instance because so few customers use this service. Staff also notes that an appropriate resolution of this issue depends in part on how and when the outside plant related non-recurring charges shall apply. Staff believes that such charges should not apply when the customer is merely changing carriers. AT&T agrees with Staff's position that non-recurring costs should not apply when the customer is merely changing carriers but disputes Staff's comments that lower DOP factors may be appropriate for ISDN loops. AT&T states that the 80 percent factor was derived as an average of all loop types, so that if a lesser percentage is used for ISDN loops, a higher percentage should be utilized for basic loops. The Commission agrees with AT&T that the 80 percent DOP factor should be applicable to all loop types. SWBT's failure to incorporate the appropriate DOP factor provides additional support for the Commission to set prices in the low end of the range of possible prices. The Commission also agrees that a non-recurring charge should not be imposed on the customer when the customer merely switches service provides. For prior discussion on this issue, see paragraph 34 above.

Other Issues Regarding Cost Studies:

50. With respect to the Unauthorized Change (or Slamming) Investigation Charge, an issue arose as to whether the costs should be associated with a manual or electronic process. SWBT suggests the Commission should base such costs on a service representative conducting a manual investigation, which will include initial and subsequent contact with the competing local exchange carrier to resolve the slamming issue and follow up with a Letter of Authorization. AT&T suggests the Commission should base such costs on an electronic mail-centered process whereby SWBT's first response should be to forward the complaint electronically to the competing local exchange carrier for resolution, with any follow up contacts also made electronically. The Commission finds that it is inappropriate to assume almost away the time of the service representative, who will still be required to originate and respond to electronic mail messages. Given the volume of slamming complaints, and the fact that slamming appears to be a continuing problem, it would not be appropriate to reduce the charge to carriers for slamming investigation. The Unauthorized Change Investigation Charge from original Attachment B is not, on its face, unreasonable and provides an additional financial reason against slamming, which is the direction we wish to proceed. Accordingly, the Commission will continue the Unauthorized Change Investigation Charge of $6.83.

51. With respect to NID, the concerns regarding SWBT's NID charge appears to have been resolved by SWBT's commitment to charge only the competing local exchange carriers that order this service. *Compare* SWBT Comments, dated December 17, 1999, page 4, and AT&T Responsive Comments, dated January 10, 2000, paragraph 14. The Commission accepts SWBT's representation to charge competing local exchange carriers the NID charge only if such service is requested.

52. With respect to Emergency 911 services, the Commission accepts SWBT tariff rates.[15] Although local units of government have been able to negotiate Emergency 911 rates, the Commission believes that these rates are cost based. Furthermore, the Commission has not recieved any TELRIC cost studies pricing these elements. By accepting SWBT tariff rates, the Commission does not intend to preclude application of TELRIC principles in any subsequent Commission proceeding.

IV.

IMPLEMENTATION

53. Implementation of the Commission's order is critically important to the development of competition in Kansas telecommunication markets. As discussed above, in Docket No. 97-SWBT-411-GIT, the Commission agreed to support SWBT's application before the FCC for InterLATA authority under Section 271 of the Federal Telecommunications Act. The Commission's support was premised, in part, on the expectation that final permanent prices for UNEs, including the non-recurring charge component, would be in place and available to CLECs.

54. SWBT shall implement and incorporate the rates established in this order into all existing interconnection agreements that have established rates subject to determinations in this docket. No further order shall be required to execute this requirement.

55. The February 19, 1999 Order listed the prices of the non-recurring cost elements in the original Attachment B. These prices set forth in the original Attachment B were incorporated into SWBT's UNE master list filed on October 29, 1999. SWBT must refile its UNE master list incorporating the permanent prices established by this order and in accordance with instructions

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[15]/ See Reference Number 9 on the Revised Attachment B.

provided herein. The permanent prices established by this order shall be effective as of the date of this order.

Operator and Directory Assistance ("OS-DA") or OS-DA functions and External Rater/Reference:

56. As discussed above, SWBT is required to refile its master list of UNEs in accordance with the Commission's findings made in this order. In the Order Regarding Issues Subject to Comment under the Reconsideration Order, the Commission addressed the necessity for SWBT to continue providing certain unbundled network elements in light of the FCC's Unbundled Network Element Remand Order. The Commission agreed with SWBT's position that under the FCC's order, an ILEC is not required to provide either call branding of OS-DA or OS-DA functions and External Rater/Reference as unbundled network elements, and no price will be determined by the Commission for these items in this order. However, the master list document to be filed with the Commission shall retain and identify these items in a separate section, appropriately labeled. This section of the document is intended to ensure that the public and CLECs have information of items that must be provided under the Federal Telecommunication Act on a nondiscriminatory basis. The master list document will provide Staff, CLECs and the public a single reference source identifying elements and functions that SWBT is required to provide under the act.

Directory White Pages:

57. In the February 19, 1999 Order, the Commission listed the charges for Directory White Pages on the recurring cost attachment. The Commission believes it is more appropriate to list most of these elements as non-recurring cost elements because they are more in the nature of a one-time charge. Those elements are set forth in Revised Attachment B. Accordingly, the UNE

master list should be corrected to list the elements under the category of Directory White Pages as non-recurring cost elements. The charges for these elements shall remain the same as stated in the February 19, 1999 Order.

Permanent Prices of the Non-Recurring Charges for Unbundled Network Elements set forth in Revised Attachment B:

58. Attached to this order is Revised Attachment B. Revised Attachment B identifies the non-recurring elements and sets a price that fall inside the range of prices that a reasonable application of TELRIC principles would produce. The prices in Revised Attachment B reflect the Commission's efforts to fine tune the prices for the non-recurring cost elements, consistent with the determinations made by the Commission in this order. The Commission has kept the same format for listing the prices for the non-recurring cost elements. The Commission recognizes that the original Attachment B omitted some of the non-recurring unbundled network elements. The Revised Attachment B incorporates the omitted element and lists the final price. Reference numbers identify the specific basis upon which the Commission has calculated the price for the listed UNEs.

59. The prices set forth in the original Attachment B fell within the range of prices established by the cost studies initially filed in this docket. There are significant inconsistencies between the filed cost study information and the intent and direction of the submission requirements specified in the Reconsideration Order. The prices set forth in SWBT's re-submitted cost study are significantly higher than the prices submitted in SWBT's original cost studies. *See, e.g.*, Comparison of Non-Recurring Rates attached to SWBT's November 9, 1999 Letter Transmitting Cost Studies and Staff Comments dated December 17, 1999 at pages 2-3. Moreover, the re-submitted cost study information failed to correctly apply the 5 percent fall out factor, failed to remove TBO costs, and failed to employ the proper DIP and DOP factors. No explanation has been provided explaining why

a re-submitted cost study could have caused a doubling, tripling or even quadrupling of the UNE prices. The Commission finds that the original cost studies filed herein established the appropriate range of UNE prices from which the Commission will determine the final permanent UNE prices as reflected in Revised Attachment B.

60. The Commission notes that under the Stipulation and Agreement approved on October 13, 2000, the Commission will review these prices should the FCC revise its pricing rules as a result of either the United States Court of Appeals for the Eight Circuit issuing a final mandate on the FCC's pricing rules or the United States Supreme Court upholding the Eighth Circuit Court's vacatur or otherwise mandating modifications to any of the FCC's pricing rules. The Commission is free to update these prices in the future with current information, consistent with the pricing rules established through the litigation pending before the Eight Circuit Court or United States Supreme Court. The passage of time, changes in technology or other special circumstances may give rise for the Commission to review the UNE prices set in this docket.

61. The prices set forth in Revised Attachment B must be incorporated in SWBT's master list of UNE prices. As a result of this order, SWBT will be required to file a revised master list within 30 days. SWBT's master list will be available to the public, including CLECs. These prices are not set as a maximum or a minimum for parties negotiating interconnection agreements with SWBT. The Commission recognizes that special circumstances may exist between SWBT, as an ILEC, and a CLEC that will cause the parties to negotiate or arbitrate prices different from those provided in the master list. If an interconnection agreement can only be reached through arbitration, an arbitrator is free to consider the prices established in the master list. The Commission notes that under SWBT's K2A interconnection agreement filed in Docket N. 97-SWBT-411-GIT, a CLEC will

have the opportunity to purchase UNEs at the prices stated in the master list so long as all materially related provisions are taken pursuant SWBT's K2A interconnection agreement. While the Commission is free to examine whether the rates, charges, terms and conditions for basic UNE elements should be filed as a tariff to ensure access on a nondiscriminatory basis, SWBT's filing addresses the Commission's immediate concern about access to SWBT's network. The parties are encouraged to negotiate for better rates, charges, terms and conditions.

Loop Conditioning for Digital Subscriber Line Service ("DSL"):

62. DSL technology describes a family of transmission technologies that use specialized electronics at the customer's premises and at a telephone company's central office to transmit high-speed data signals over copper wires (and perhaps some fiber optic facilities). Only recently developed, DSL technology allows transmission of data at vastly higher speeds than can be achieved through analog data transmission. Due to the technological advances, DSL charges are extremely important to several telecommunications providers. Indeed, DSL charges have been subject in three recent arbitration proceedings pending before the Commission. *See, e.g.*, Sprint Communications/Southwestern Bell Telephone Co. arbitration, Docket No. 99-SCCC-710-ARB ("Sprint Arbitration") and DIECA Communications/Southwestern Bell Telephone Co. Arbitration, Docket No. 00-DCIT-389-ARB and 00-DCIT-997-ARB (collectively referred to as "Covad Arbitration"). Among the cost studies SWBT filed in this proceeding are ones which address aspects of DSL provisioning. Covad filed a Motion to Bifurcate the determination of DSL rates from this matter and to determine those rates in a separate proceeding. The Commission granted the motion and open an investigation in Docket No. 00-GIMT-032-GIT to expressly consider the terms, rates and conditions of DSL UNEs. The Commission will not address the DSL charges in this order.

However, SWBT is required to incorporate the interim prices authorized in 00-GIMT-032-GIT in its UNE master list.

Other Changes to UNE Master List:

63. The Commission notes that the FCC prohibits ILECs from separating already-combined network elements before leasing them to a competitor. Accordingly, the UNE master list shall not include the category identified as Cross Connect to Point of Access for UNE Combinations listed on pages 21-22 of the SWBT filing made on October 29, 1999. *AT&T Corp. v. Iowa Utilities Board*, *525* U.S. 366, 393-95 (1999).

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) The foregoing statements, discussion, and analysis are hereby adopted as Findings and Conclusions of the Commission.

(B) The prices set forth in the restated Attachment B are hereby accepted as the final prices of the non-recurring unbundled network elements.

(C) SWBT shall immediately revise and refile its UNE master list in accordance with the Commission's determinations made herein.

(D) SWBT shall immediately implement and incorporate the rates established in this order into all existing interconnection agreements that have established rates subject to determinations in this docket.

(E) The request of New Edge Network, Inc. to withdraw its petition to intervene is granted.

(F) Pursuant to K.S.A. 66-118b, the parties have fifteen days, plus three days if service of this Order is by mail, from the date of this Order in which to petition the Commission for reconsideration of any matter decided herein.

(G) The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further order or orders as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus, Com.; Moline, Com.

Dated: NOV 03 2000

ORDER MAILED

NOV 03 2000

Executive Director

Jeffrey S. Wagaman
Executive Director